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Administrator, Agricultural Marketing Service.

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 19

[Docket No. 03-19]

RIN 1557-AC10

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Part 263

[Docket No. R-1139]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

RIN 3064-AC57

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 513

[No. 2003-33]

RIN 1550-AB53

Removal, Suspension, and Debarment of Accountants From Performing Audit Services

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Final rule.

SUMMARY: The OCC, Board, FDIC, and OTS (each an Agency, and collectively, the Agencies) are jointly publishing final rules pursuant to section 36 of the Federal Deposit Insurance Act (FDIA). Section 36, as implemented by 12 CFR part 363, requires that each insured depository institution with total assets of \$500 million or more obtain an audit of its financial statements and an attestation on management's assertions concerning internal controls over financial reporting by an independent public accountant (accountant). The insured depository institution must include the accountant's audit and attestation reports in its annual report.

Section 36 authorizes the Agencies to remove, suspend, or debar accountants from performing the audit services required by section 36 if there is good cause to do so. The final rules establish rules of practice and procedure to implement this authority and reflect the Agencies' increasing concern with the quality of audits and internal controls for financial reporting at insured depository institutions. Although there have been few bank and thrift failures in recent years, the circumstances of the failures that have occurred illustrate the importance of maintaining high quality in the audits of the financial position and attestations of management assessments of insured depository institutions. The final rules enhance the Agencies' ability to address misconduct by accountants who perform annual audit and attestation services.

EFFECTIVE DATE: October 1, 2003.

FOR FURTHER INFORMATION CONTACT:

OCC: Mitchell Plave, Counsel, Legislative and Regulatory Activities Division, (202) 874-5090; Richard Shack, Senior Accountant, Office of the Chief Accountant, (202) 874-4911; and Karen Besser, National Bank Examiner, Special Supervision/Fraud, (202) 874-4464.

Board: Richard Ashton, Associate General Counsel, Legal Division, (202) 452-3750; Nina Nichols, Counsel, (202) 452-2961; Arthur Lindo, Project Manager, (202) 452-2695; and Salome Tinker, Senior Financial Analyst, (202) 452-3034, Division of Banking Supervision and Regulation; for users of Telecommunication Devices for the Deaf (TDD) only, contact (202) 263-4869.

FDIC: Richard Bogue, Counsel, Enforcement Unit, (202) 898-3726; Harrison E. Greene, Jr., Senior Policy Analyst, Accounting and Securities Disclosure Section, Division of Supervision and Consumer Protection, (202) 898-8905.

OTS: Christine A. Smith, Project Manager, (202) 906-5740, Supervision Policy; Teresa A. Scott, Counsel (Banking & Finance), (202) 906-6478, Regulations and Legislation Division.

SUPPLEMENTARY INFORMATION:

I. Background

Section 36 of the FDIA (12 U.S.C. 1831m), as implemented by FDIC regulations, requires every large insured depository institution to submit an annual report containing its financial statements and certain management assessments to the FDIC, the appropriate Federal banking agency, and any appropriate state bank supervisor.¹

¹ 12 U.S.C. 1831m, 1831m(j)(2); *see also* 12 CFR part 363 (describing the requirements for

Section 36 of the FDIA also requires that an independent public accountant audit the insured depository institution's annual financial statements to determine whether those statements are presented fairly in accordance with generally accepted accounting principles (GAAP) and with the accounting objectives, standards, and requirements described in section 37 of the FDIA. Under section 37, the accounting principles applicable to financial statements required to be filed with the Agencies must be uniform and consistent with GAAP.² In addition, the accountant must attest to and report on management's assertions concerning internal controls over financial reporting.³ The institution's annual report also must contain the accountant's audit and attestation reports.⁴

Section 36 of the FDIA gives the Agencies the authority to remove, suspend, or bar an accountant from performing the audit services required under section 36 for good cause.⁵ This authority is in addition to the enforcement tools the Agencies have under section 8 of the FDIA, which enable the Agencies to remove or prohibit an institution-affiliated party (IAP), including an accountant, from further participation in the affairs of an insured depository institution for certain types of misconduct.⁶ Section 36 authority is also distinct from the Agencies' authority to remove, suspend, or debar from practice before an Agency parties, such as accountants, who represent others.⁷

Section 36 does not define good cause, but authorizes the Agencies to implement section 36 through the joint issuance of rules of practice.⁸ A removal, suspension, or debarment under section 36 would limit an accountant's or accounting firm's eligibility to provide audit services to

independent audits and reporting for all insured depository institutions). The statute gives the FDIC Board of Directors the discretion to establish the threshold asset size at which a section 36 annual report is required. That amount is currently set at \$500 million. *See* 12 CFR 363.1(a). While a section 36 audit is not required of financial institutions with less than \$500 million in total assets, the Agencies encourage every insured depository institution, regardless of its size or character, to have an annual audit of its financial statements performed by an independent public accountant. *See* 12 CFR 363 App. A (Introduction).

² 12 U.S.C. 1831m(d), 1831n.

³ *Id.* 1831m(c); *see also* 12 CFR part 363

(independent audit and reporting requirements).

⁴ 12 U.S.C. 1831m(a)(1) and (2).

⁵ *Id.* 1831m(g)(4)(A).

⁶ *Id.* 1813(u)(4), 1818(e)(1).

⁷ *See* 12 CFR part 19, subpart K; 12 CFR part 263, subpart F; and 12 CFR part 513.

⁸ 12 U.S.C. 1831m(g)(4)(B).